

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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UNITED STATES OF AMERICA,

Plaintiff-Respondent,

vs.

JERMAINE MOORER,

Defendant-Petitioner.  
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CASE NO. 1:14-CR-00214-6

ORDER & OPINION  
[Resolving Doc. [687](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Defendant Jermaine Moorer asks the Court to vacate his sentence under 28 U.S.C. § 2255.<sup>1/</sup> On November 10, 2014, Moorer executed a plea agreement and pled guilty to one count of conspiracy to possess with intent to distribute cocaine.<sup>2/</sup>

On February 26, 2015, the Court sentenced Moorer to 102 months of incarceration.<sup>3/</sup> On March 4, 2015, Moorer filed a notice of appeal of his conviction with the Sixth Circuit.<sup>4/</sup> The appeal is still pending.<sup>5/</sup> The Government opposes Moorer's motion and argues that the Court is without jurisdiction to entertain the motion due to the pendency of Moorer's appeal.<sup>6/</sup>

"As a general rule the filing of a notice of appeal divests the district court of jurisdiction and transfers jurisdiction to the court of appeals."<sup>7/</sup> "This court has carved out an exception to this rule

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<sup>1/</sup>Doc. [687](#).

<sup>2/</sup>Doc. [353](#).

<sup>3/</sup>Doc. [550](#).

<sup>4/</sup>Doc. [591](#).

<sup>5/</sup>See Docket. No. 15-3203.

<sup>6/</sup>Doc. [713](#).

<sup>7/</sup>[Cochran v. Birkel](#), 651 F.2d 1219, 1221 (6th Cir. 1981).

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that allows a District Court to entertain a motion for relief from judgment after an appeal has been filed if it so chooses. The decision of whether to hear this type of post-judgment motion while an appeal is pending is within the District Court's discretion, and there is no error where the District Court decides to let the appeal run its course.”<sup>8/</sup>

Moorer’s motion asks the Court to vacate his sentence based on double jeopardy. Addressing this argument would not aid in Moorer’s appeal and would instead entail duplicative proceedings. The Court declines to entertain Moorer’s motion and will let his appeal run its course. Thus, Moorer’s motion is **DISMISSED**.

IT IS SO ORDERED.

Dated: April 2, 2015

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>8/</sup> Dunham v. United States, 486 F.3d 931, 935 (6th Cir. 2007) (internal citations omitted).